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8
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 JAMES PORATH, individually on behalf of all
13 others similarly situated individuals,

14 Plaintiffs,

15 v.

16 LOGITECH INC., a California corporation,

17 Defendant.
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Case No. 3:18-cv-03091-WHA

**LOGITECH INC.'S REPLY TO
PLAINTIFF'S RESPONSE (ECF NO. 61)
TO THE COURT'S ORDER (ECF NO.
55)**

Hon. William Alsup

Today, James Porath, the plaintiff in this putative class action, disclosed to the Court and Logitech that he is a repeat felon. His counsel recognizes that this problem permeates several important aspects of this case, including the on-going class certification proceedings and the Court's stated intention to entertain a request (if one is made) by plaintiff's counsel to be appointed interim class counsel once class certification briefing is completed. And though plaintiff's counsel acknowledges "embarrass[ment]" about all of this and makes sure to "apologize[] to the Court for their failure to properly conduct . . . due diligence" (ECF No. 61, n.2), neither plaintiff nor his counsel so much as reference – let alone suggest a resolution to – the significant disruption plaintiff's filing causes to Logitech or the uncertainty under which Logitech is now operating at a crucial and very time-challenged period in the litigation:

- Logitech is scheduled to take Mr. Porath's deposition *this Tuesday* at 10:00 a.m., and
- Logitech's opposition to the class certification motion is due in *two weeks*.

Yet, according to today's filing, Mr. Porath may no longer be a class representative.¹

Plaintiff's proposed solution for this predicament (a predicament entirely of his and his counsel's own making) is an as-of-now-unscheduled status conference seeking an advance advisory opinion from the Court as to the adequacy of Mr. Porath to be a class representative. This is an entirely inadequate solution given the pressing deadlines facing Logitech.

For sake of certainty and efficiency – and so as to properly account for the current case schedule – Logitech suggests the following three options, any of which are acceptable to it:

- The Court rejects plaintiff's request for a status conference and reconfirms the current class certification motion schedule with Mr. Porath as the named plaintiff, and determines Mr. Porath's adequacy in the normal course as part of those proceedings;
- The Court rejects plaintiff's request for a status conference and orders plaintiff's counsel to substitute in a new plaintiff and continues the class certification motion

¹ Though plaintiff's counsel knew about all of this a week ago, they inexplicably filed their class certification motion anyway (albeit "with the intent of supplementing the record after further research into the issue") and did not provide any advance notice to Logitech of today's filing (or the scheduling issues it causes), even though they know Logitech is operating under extreme time pressure given the current case deadlines.

1 schedule to accommodate the substitution (including any new filings necessitated by
2 having a new plaintiff) and provide sufficient time for Logitech's deposition of the
3 new plaintiff and preparation of class certification opposition papers; or

- 4 • The Court vacates the current class certification motion schedule, and, following its
5 consideration of the issues, re-sets the schedule so as to provide (i) for any new filings
6 necessitated by having a new plaintiff, (ii) Logitech with sufficient time to take the
7 deposition of the then plaintiff(s), and (iii) at least two weeks thereafter to file class
8 certification opposition papers.

9 Given that the deposition of Mr. Porath is scheduled for Tuesday, Logitech respectfully
10 requests that the Court act on plaintiff's request for a status conference consistent with one of
11 these options as soon as reasonably feasible.

12 Respectfully submitted.

13 Dated: October 2, 2019

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17 By: /s/ Dale J. Giali
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